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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,187	09/09/2003	Linda Elizabeth Chesser	NUC01 P-110	3344
28101	7590	04/21/2004	EXAMINER	
VAN DYKE, GARDNER, LINN AND BURKHART, LLP			AMIRI, NAHID	
2851 CHARLEVOIX DRIVE, S.E.				
P.O. BOX 888695			ART UNIT	
GRAND RAPIDS, MI 49588-8695			PAPER NUMBER	
			3635	
DATE MAILED: 04/21/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/658,187

Applicant(s)

CHESSER ET AL. 

Examiner

Nahid Amiri

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>09 September 2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-50 rejected under the judicially created doctrine of double patenting over claims 1-47 of U. S. Patent No. 6,615,551 B2 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

Claims 1-2 has same limitation of claim 1 of US Patent No. '551.

Claim 3 has same limitation of claim 2 of US Patent No. '551.

Claim 4 has same limitation of claim 3 of US Patent No. '551.

Claim 5 has same limitation of claim 4 of US Patent No. '551.

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Claim 6 has same limitation of claim 5 of US Patent No. '551.  
Claim 7 has same limitation of claim 6 of US Patent No. '551.  
Claim 8 has same limitation of claim 7 of US Patent No. '551.  
Claim 9 has same limitation of claim 8 of US Patent No. '551.  
Claim 10 has same limitation of claim 9 of US Patent No. '551.  
Claim 11 has same limitation of claim 10 of US Patent No. '551.  
Claim 12 has same limitation of claim 11 of US Patent No. '551.  
Claim 13 has same limitation of claim 12 of US Patent No. '551.  
Claim 14 has same limitation of claim 13 of US Patent No. '551.  
Claim 15 has same limitation of claim 14 of US Patent No. '551.  
Claim 16 has same limitation of claim 15 of US Patent No. '551.  
Claim 17 has same limitation of claim 16 of US Patent No. '551.  
Claim 18 has same limitation of claim 17 of US Patent No. '551.  
Claim 19 has same limitation of claim 18 of US Patent No. '551.  
Claim 20 has same limitation of claim 19 of US Patent No. '551.  
Claim 21 has same limitation of claim 20 of US Patent No. '551.  
Claim 22 has same limitation of claim 15 of US Patent No. '551.  
Claim 23 has same limitation of claim 21 of US Patent No. '551.  
Claim 24 has same limitation of claim 22 of US Patent No. '551.  
Claim 25 has same limitation of claim 23 of US Patent No. '551.  
Claim 26 has same limitation of claim 24 of US Patent No. '551.  
Claim 27 has same limitation of claim 25 of US Patent No. '551.  
Claim 28 has same limitation of claim 26 of US Patent No. '551.  
Claim 29 has same limitation of claim 27 of US Patent No. '551.

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Claim 30 has same limitation of claim 28 of US Patent No. '551.

Claim 31 has same limitation of claim 29 of US Patent No. '551.

Claim 32 has same limitation of claim 30 of US Patent No. '551.

Claim 33 has same limitation of claim 31 of US Patent No. '551.

Claim 34 has same limitation of claim 32 of US Patent No. '551.

Claim 35 has same limitation of claim 33 of US Patent No. '551.

Claim 36 has same limitation of claim 34 of US Patent No. '551.

Claim 37 has same limitation of claim 35 of US Patent No. '551.

Claim 38 has same limitation of claim 34 of US Patent No. '551.

Claim 39 has same limitation of claim 36 of US Patent No. '551.

Claim 40 has same limitation of claim 37 of US Patent No. '551.

Claim 41 has same limitation of claim 38 of US Patent No. '551.

Claim 42 has same limitation of claim 39 of US Patent No. '551.

Claim 43 has same limitation of claim 40 of US Patent No. '551.

Claim 44 has same limitation of claim 41 of US Patent No. '551.

Claim 45 has same limitation of claim 42 of US Patent No. '551.

Claim 46 has same limitation of claim 43 of US Patent No. '551.

Claim 47 has same limitation of claim 44 of US Patent No. '551.

Claim 48 as same limitation of claim 45 of US Patent No. '551.

Claim 49 as same limitation of claim 49 of US Patent No. '551.

Claim 50 as same limitation of claim 47 of US Patent No. '551.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application

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which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 5,778,612 Kissinger et al.

US Patent No. 5,964,164 Lechman

US Patent No. 6,241,329 B1 Nielsen


US Patent No. 6,272,795 Brauning

US Patent No. 6,402,109 Dittmer

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nahid Amiri whose telephone number is (703) 305-4241 and Fax number is 703-872-9306. The examiner can normally be reached on Monday-Friday from 8:00-5:30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Carl Friedman can be reached at (703) 308-0839.

na *na*

April 16, 2004

  
Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600